IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

CRL.A.No. 394 of 2006(A)

AGAINST THE ORDER IN CP.100/03 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ADOOR -
SC.102/2005 of ADDITIONAL DISTRICT & SESSIONS (AD HOC) FAST TRACT COURT II, PATHANAMTHITTA

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APPELLANT:

PUSHPANGADAN,
S/O.KUNJU PILLAI,
C.NO.8642, CENTRAL PRISON,
POOJAPPURA.P.O, THIRUVANANTHAPURAM-12.

BY ADV. ADV.N.K.SUBRAMANIAN(STATE BRIEF))

RESPONDENT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTORSRI. C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 394 OF 2006

Dated this the 16th day of November, 2006

JUDGMENT

The appellant is the accused in Sessions Case No.102 of 2005 on the file of the Additional District and Sessions (Ad hoc) Fast Track Court II, Pathanamthitta. He was tried for the offence punishable under Section 55 (a) and (i) of the Abkari Act (hereinafter referred to as "the Act").

2. The prosecution case against the appellant was that on 5.7.2002 on the basis of the information received by the police party while they were on patrol duty, they came to the landed property of the appellant and found him engaged in the sale of arrack. The appellant was found holding a plastic bottle containing 500 ml. of arrack and a glass. It is the further case of the prosecution that two other persons standing near the appellant escaped from the place on seeing the police party. Though the appellant tried to escape, he was intercepted by the police and on questioning, the appellant confessed having stored 7 litres of arrack in a black can among the bricks. PW.3, the Sub Inspector of Police arrested the appellant and seized the contraband articles under Ext.P1 mahazar which was attested by

PW.1, an independent witness. After completing the investigation, PW.3 filed the final charge sheet before the court.

3. To prove the case against the appellant, the prosecution examined PWs.1 to 3 and produced Exts.P1 to P8 as well as Mos.1 to 3. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. and he denied the entire prosecution case. According to the appellant, the police had falsely implicated him.

4. Relying on the oral and documentary evidence adduced by the prosecution, the court below found the appellant guilty under Section 8(2) of the Act, convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,00,000/- with default sentence of one year. The above conviction and sentence are challenged in this appeal.

5. The State Brief appearing for the appellant submits that the prosecution case against the appellant was under Sections 8(2) and 55(a) and (i) of the Act and since the prosecution failed to prove any case under Section 55(a) and (i) of the Act, the conviction entered under Section 8(2) of the Act is not sustainable. Counsel further submits that the officers

who detected the crime had not complied with the mandatory provisions of the Act while seizing, sealing and sending the contraband articles to the court and that there was no independent to support the evidence of the police officers. Hence, according to the learned counsel, the conviction entered by the court below is not justifiable.

6. PWs.2 and 3, the Police Constable and Sub Inspector of Police respectively, gave evidence to the effect that when the reached the place of occurrence, they saw the appellant holding a plastic bottle containing arrack and a glass and two persons running away from the spot. They also stated that the appellant confessed having stored 7 litres of arrack in a black can among the bricks. These witnesses further deposed that the contraband articles were seized under Ext.P1 mahazar attested by PW.1 and samples were sent for chemical analysis. Ext.P7 is the chemical analysis report. PW.3 stated before the court below that Ext.P7 chemical analysis report proved that the sample contained 26.92% and 27.37% by volume of ethyl alcohol.

7. The contention of the learned counsel for the appellant that the police officers had not complied with the provisions contained in Section 53 of the Act while they seized the contraband articles was on the basis of

the statement given by PW.3 that no seal was seen on the material objects while he was examined. Only because of this reason, this Court is not in a position to hold that the police officers had not complied with the provisions of Section 53 of the Act. Section 53 deals with the procedure to be followed by the police officers when they seize contraband articles and take samples from them. The contraband articles seized and the samples so taken should be sealed with the seal of the officer in charge of the police station. PW.3 had stated that at the time he was examined in court, the seal affixed on the contraband articles and the samples was not seen. That by itself will not prove that Section 53 of the Act was not complied with by the police officers. Hence, the contention regarding non-compliance of Section 53 of the Act is rejected.. That apart, though PW1. is the attester to Ext.P1 mahazar, he did not support the case of the prosecution.

8. This Court already found that there is evidence to prove that the appellant was found in possession of 7 ½ litres of arrack and he had no permit or license to possess such article. Hence, the offence committed by the appellant squarely comes under Section 8(2) of the Act. Though the charge framed against the appellant was under Sections 8(2) and 55(a) and (i) of the Act, the evidence adduced would show that the appellant

committed offence punishable under Section 8(2) of the Act . In the above circumstances, the conviction and sentence ordered by the court below are justifiable and require no interference by this Court.

The Crl.Appeal fails and it is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.394/2006

JUDGMENT

16TH NOVEMBER,2006